S.B. CIVIL WRIT PETITION NO.588/2004

Life Insurance Corporation of India

Vs.

Mridul Kumar and others.

Date : 4.4.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. J.L. Purohit, for the petitioner.

Mr. G.L. Lohar, for the respondents.

- - - - -

Heard learned counsel for the parties.

The petitioner is aggrieved against the order dated 18.10.2000 by which the trial court allowed the plaintiff/respondent's application for amendment of the plaint.

According to learned counsel for the petitioner, though the first appellate court passed the order on 11.5.2000 of injunction but that order merged in the order which was passed in S.B.Civil Revision Petition NO.328/2000 dated 18.7.2000 and it is clear from the order dated 18.7.2000 that this Court after hearing the parties passed an appropriate order about construction how to be raised and in case, the suit is not decided in time, then the petitioner shall have opportunity to move application for construction of boundary wall as well as for soak pit etc.

According to learned counsel for the petitioner, despite this, the respondents sought amendment of the plaint so as to take a plea that in view of the order of the first appellate court dated 11.5.2000, the petitioner could not have done anything but did some wrong violating the order dated 21.5.2000 and, therefore, the plaintiff shall have right to seek decree on the basis of the order dated 21.5.2000.

The apprehension of the learned counsel for the petitioner appears to be not well founded in as much as, it is clear from para 8(a) of the proposed amendment which is sought to be added in the plaint that what has been stated by the plaintiff in this para is according to the plaintiff, is statement of fact and that is to the effect only that the first appellate court passed an order on 11.5.2000 and the defendants raised construction on 21.5.2000 and according to the plaintiff because of this highhanded action of the defendants, the way has been obstructed by them.

It appears from the language used in para 8(a) that the petitioner developed a fear that by this amendment, the plaintiff is only seeking enforcement of the order of first appellate court passed in a proceedings under Order 39 Rules 1 and 2 C.P.C. only which itself is not enforceable in the manner in which it has been sought to be enforced and secondly, the order has been merged in the order dated

18.7.2000. Whereas in fact, by this amendment, the plaintiff is not seeking enforcement of the order dated 11.5.2000 or even the order passed in interlocutory proceedings but has put on record certain facts which he want to prove to get the relief in the suit.

The petitioner shall have full right to contest the allegations as levelled by the plaintiff by filing written statement.

In view of the above discussion, I do not find any reason to interfere in the impugned order while exercising supervisory jurisdiction under Article 227 of the Constitution of India.

Accordingly, this writ petition, having no merit, is hereby dismissed.

The petitioner shall have liberty to file written statement within two weeks from today if he has not filed written statement with respect to amended part of the plaint.

(PRAKASH TATIA), J.

S.Phophaliya